



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION**

JOHN HENRY,  
Plaintiff,

vs.

K. SHARP, Assoc. Warden; SGT. BURLEY,  
SGT. HASTY; and SGT. CLARK,  
Defendants.

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CIVIL ACTION NO. 4:18-413-MGL-TER

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
AND DISMISSING THE ACTION WITHOUT PREJUDICE  
AND WITHOUT ISSUANCE AND SERVICE OF PROCESS**

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Plaintiff, who is proceeding pro se, filed this as a 42 U.S.C. § 1983 action. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the Court dismiss this lawsuit without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 20, 2018, but Plaintiff failed to file any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court the case is **DISMISSED WITHOUT PREJUDICE** and without issuance and service of process. As noted by the Magistrate Judge, however,

Plaintiff may amend his Complaint in accordance with Fed. R. Civ. Proc. 15. *See also Grady v. White*, No.16-7722, 2017 WL 1437235 (4th Cir. April 24, 2017) (dismissing without remanding to district court because district court previously afforded Plaintiff the chance to amend his complaint). Plaintiff’s attention is drawn to this rule as he may be able to cure the deficiency noted [in the Report].

Report 5 n.3.

**IT IS SO ORDERED.**

Signed this 20th day of March, 2018, in Columbia, South Carolina.

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/s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

Plaintiff is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.